

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 17653
[Redacted],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On October 10, 2003, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing additional income tax and interest for the taxable year 2002 in the total amount of \$451.

On October 14, 2003, the taxpayer filed an appeal and petition for redetermination. The taxpayer requested a hearing, which was held on December 16, 2003. The Tax Commission, having reviewed the file and the information presented in the hearing, hereby issues its decision.

The taxpayer filed his 2002 Idaho individual income tax return as head of household with his daughter, [Redacted], as the qualifying dependent. The taxpayer also claimed a dependent exemption for his daughter. During the processing of the taxpayer's 2002 return, it was discovered that the taxpayer's daughter was claimed as a dependent on the taxpayer's ex-wife's 2002 Idaho individual income tax return. Both the taxpayer's and his ex-wife's returns were referred to audit to sort the matter out.

The Income Tax Audit Bureau (Bureau) determined the taxpayer was not entitled to file his return as head of household. Furthermore, the Bureau determined the taxpayer was not allowed to claim his daughter as a dependent. The Bureau sent the taxpayer a Notice of Deficiency Determination, which the taxpayer appealed. The taxpayer stated he provided 100% of his daughter's support in 2002. He should be entitled to the dependent exemption.

The Bureau referred the matter for administrative review. The Tax Commission sent the taxpayer a letter giving him two options for having the Notice of Deficiency Determination

redetermined. The taxpayer chose to have a hearing before a representative of the Tax Commission to present information in support of his claim.

The taxpayer stated his daughter was born in February 2002. From January 2002 to June 28, 2002, the taxpayer's wife and then his daughter lived with him. On June 28, 2002, the taxpayer's wife took their daughter and left the taxpayer. The taxpayer's wife and daughter did not live with him for the remainder of the year. On October 10, 2002, the District Court in [Redacted] County issued a temporary order that the taxpayer pay his wife \$227.00 per month for support of their minor child. The payments were to start effective July 23, 2002. The taxpayer stated he paid the child support through the end of 2002.

The taxpayer stated that, when his wife left with his daughter, she moved in with her parents. He stated his wife was unemployed from August 2002 to April 2003. He stated his wife was not providing their daughter with a household. It was her parents that were providing the child a place to live. He stated there was no legal document that stated who got to claim their daughter as a dependent. Since he provided all of his daughter's support, the taxpayer believed he was entitled to the exemption for his daughter.

Idaho Code section 63-3002 refers to the Internal Revenue Code (IRC) for the determination of taxable income. Included in the determination of taxable income is the allowance of an exemption amount for dependents of the taxpayer. IRC section 151 allows a taxpayer to deduct an exemption amount for each dependent as defined in IRC section 152. The term "dependent" includes the taxpayer's daughter over half of whose support for the calendar year is received from the taxpayer. (IRC section 152(a)(1).)

IRC section 152(e) states the support test in the case of a child of divorced or separated parents. This section applies if: (1) A child receives over half of his support during the calendar

year from his parents; (2) the parents live apart at all times during the last 6 months of the calendar year; and (3) such child is in the custody of one or both of his parents for more than one-half of the calendar year. If these requirements are satisfied, as in this case, the "child shall be treated, for purposes of subsection (a), as receiving over half of his support during the calendar year from the parent having custody for a greater portion of the calendar year (. . . referred to as the custodial parent)" thus allowing the dependency exemption to be claimed by the "custodial parent." (IRC section 152(e)(1); see also Treasury Regulations section 1.152-4(c).)

Custody is determined by the terms of the most recent custody decree if there is one in effect. (Treasury Regulations section 1.152-4(b).) For calendar year 2002, there was no custody decree or agreement. However, the child was less than a year old for all of 2002 and was with her mother for a greater portion of the calendar year. The taxpayer and his ex-wife later agreed that their daughter would reside with the mother. Therefore, the Tax Commission found that the taxpayer's ex-wife was the custodial parent and the taxpayer the noncustodial parent for 2002.

The taxpayer, as the noncustodial parent, is allowed to claim his daughter as a dependent only if he meets one of three statutory exceptions under IRC section 152(e). The noncustodial parent can claim the dependency exemption deduction (1) if the custodial parent releases claim to the exemption for the year, (2) if a multiple-support agreement is in effect, or (3) if the decree of divorce was executed prior to 1985, the decree expressly provides that the noncustodial parent is entitled to the deduction, and the noncustodial parent provides at least \$600 for the support of the child. (IRC section 152(e)(2), (3), (4).)

None of the exceptions apply in this case. Nothing in the record points to the custodial parent releasing her claim to the exemption. To the contrary, she claimed the exemption. Further, a multiple-support agreement was not in effect, and the decree of divorce was executed

after 1984. While it may be possible that the taxpayer provided more than half of the child's support, the Tax Commission is bound by the rigors of IRC section 152(e). Therefore, the Tax Commission upholds the Bureau's determination with regard to the claimed exemption.

In regards to the head of household filing status, the taxpayer qualifies as head of household if he (1) is not married at the close of his taxable year and (2) maintains as his home a household that constitutes for more than one-half of such taxable year the principal place of abode, as a member of such household, of his daughter. (IRC section 2(b)(1)(A).) The taxpayer failed both of these tests. Legally, the taxpayer was still married at the end of 2002. His divorce was not final until August 2003. However, IRC section 2(c) provides for certain exceptions for certain married individuals living apart. IRC section 2(c) refers to IRC section 7703(b) which states,

For purposes of those provisions of this title which refer to this subsection, if –

- (1) an individual who is married (within the meaning of subsection (a)) and who files a separate return maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a child (within the meaning of section 151(c)(3)) with respect to whom such individual is entitled to a deduction for the taxable year under section 151 (or would be so entitled but for paragraph (2) or (4) of section 152(e)),
  - (2) such individual furnishes over one-half of the cost of maintaining such household during the taxable year, and
  - (3) during the last 6 months of the taxable year, such individual's spouse is not a member of such household,
- such individual shall not be considered as married.

The taxpayer failed this test in that he did not provide for more than one-half of the taxable year, as his home, the principal place of abode of his daughter. His daughter was born in February, and she left his home in late June. The remainder of the year the taxpayer's daughter lived away from the taxpayer. Since all three conditions must be met to be considered not married, the taxpayer was still considered married at the end of 2002. Therefore, since the

taxpayer was still married and he did not provide the principal place of abode for his daughter for more than one-half of 2002, he is not entitled to file as head of household. (IRC section 2(b)(1)(A).)

WHEREFORE, the Notice of Deficiency Determination dated October 10, 2003, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2002	\$436	\$ 25	\$461

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2004.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

#### CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2004, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]  
[REDACTED]

Receipt No.

\_\_\_\_\_